

100 years of the International Labour Organization or: You can't have the birthday cake and eat it

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In June, more than 6000 delegates celebrated the centenary of the International Labour Organization (ILO) on the occasion of the [108th International Labour Conference](#) (ILC) in Geneva. A broad range of [heads of state and high level representatives were among the congratulators](#) who conveyed to the plenary their affirmation of ILO's main objective. An objective which is in a nutshell captured by the first sentence of the preamble of the Constitution of the ILO: "*universal and lasting peace can be established only if it is based upon social justice*".

More than appropriate for this solemn occasion, the ILC adopted – as the first international instruments on this subject – a [Convention and a Recommendation to combat violence and harassment in the workplace](#). Both instruments are the outcome of consultations not only among government representatives. With tripartism being one of the ILO's core features, employers' and workers' representatives also had a seat at the negotiating table. The compromises that were made by the tripartite constituents are therefore reflected in the new ILO standards. Most prominently, the constituents could not agree on a list of particularly vulnerable groups. In addition, no explicit reference is being made to LGBTI persons, migrant workers are only mentioned in the Recommendation. The adoption of the instruments nevertheless is a laudable affirmation of the ILO's remaining capability to create international norms which address current socio-political issues.

Despite the frequent criticism as "toothless tiger", the ILO has shown a good deal of persistence and ability to evolve in the face of challenges since its foundation. The [Declaration of Philadelphia](#), which was adopted 1944 and later incorporated in the Constitution of the ILO, articulated (as the first international instrument to do so) the principle of equality and non-discrimination in the midst of World War II. After the failure of the inclusion of a social clause in the multilateral trade framework, the ILO spoke out for [fundamental principles and rights at work](#) and formulated the [Decent Work Agenda](#). The core labour standards, which are based on these measures, have since then been included in, for instance, the UN Global Compact, the *EU's* Generalised Scheme of Preferences and several bi- and plurilateral trade agreements.

Yet today – just like other inter- and supranational organizations – the ILO not only faces challenges from the outside but also from within. For many years now, the supervisory system of the ILO is at the centre of criticism. Initially, it was primarily employer representatives who questioned the mandate of the ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR) to

interpret ILO conventions (see the articles of *Waas* and *Bellace* in the forthcoming issue of [Archiv des Völkerrechts](#)). Based on the annual report of the CEACR, a list of 24 cases of serious violations of international labour standards is discussed each year by the Committee on the Application of Standards (CAS) during the ILC. Members of the CAS are government, employers' and workers' representatives of the 187 ILO member states. Although the matter was not finally resolved, the social partners found at least a basis for resuming the supervision of ILO conventions within CAS.

This year, the criticism came from another side. During the discussions in the CAS, certain government representatives voiced their dissatisfaction with the supervisory procedure in a way which seems more radical than usual for governments under scrutiny by the CAS. The government representative of Brazil even went so far as to indicate that "[s]hould this undesirable situation remain unchanged, Brazil reserves the right to consider all available options" ([ILC 2019, Report of the Committee on the Application of Standards, Part One, at para 350](#)). Against this critique by government actors, not only the representatives for the EU and the Group of Industrialized Market Economy Countries (IMEC) countries declared their commitment to the ILO's supervisory mechanism (*ibid.*, at paras. 490 et seq. and 494 et seq.). But also the group of employers joined hands with the workers' side in affirming this commitment (*ibid.*, at paras. 507 et seq.)

With a view to the arduous negotiating process and the wording of the [ILO Centenary Declaration for the Future of Work](#), which was also adopted at the past ILC, this might be somewhat reassuring. In contrast to the previous drafts, the text of the declaration shows certain deficits: It is deplorable, for example, that the assurance that "work is undertaken in such manner as to safeguard the environmental sustainability of the planet" which was included in an early draft (not available online) did not make it in the final text. The focus has shifted to "ensuring a just transition to a future of work that contributes to sustainable development in its economic, social and environmental dimensions" (section II A (i) of the Centenary Declaration). Furthermore, the Declaration does not – as intended in a [previous version](#) – explicitly declare occupational safety and health a fundamental principle and right at work, which would have created a fifth core labour standard. The statement in respect of the ILO's responsibility in the field of labour migration is also weaker than the one included in the draft texts.

However, as was the case with the Violence and Harassment Convention and Recommendation, at times it was not clear whether the Declaration could be finalised. The adoption of the Declaration therefore shows that the tripartite constituents are still able to find common ground. As the Global Commission on the Future of Work puts it in its [report](#): "New forces are transforming the world of work. The transitions involved call for decisive action." (at p. 10). The past ILC revealed once again the difficulties to act decisively with not only 187 member states but them being represented by three different groups of actors. Yet tripartism and social dialogue has also been the ILO's strength over the past 100 years. Regarding the ILO's objective to foster social justice, this strength is once again to be tested in these disruptive times.

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